

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen

Analyst: LuAnna Hass

Bill Number: SB 1841

Related Bills: See Prior Analysis

Telephone: 845-7478

Amended Date: May 24, 2004

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Electronic Monitoring Of Employees

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 19, 2004.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 19, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would allow employers to engage in electronic monitoring of employees after providing notice to the employees.

SUMMARY OF AMENDMENTS

The May 24, 2004, amendments modify the information to be supplied on the notice that would be required to be provided to employees under this bill. Specifically, the amendments would:

- Specify that the notice should describe the form of communication, type of computer usage, or type of electronic device that would be monitored,
- Remove information from the notice regarding the means of carrying out the monitoring, the frequency of the monitoring, and the manner in which the information will be stored, used, or disclosed.

For convenience, the Implementation Considerations and Technical Consideration from the department's analysis of the bill as amended April 19, 2004, are included below. As a result of the amendments, the department has modified the first existing implementation concern. The remainder of the department's analysis of the bill still applies.

Board Position:

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| <input type="checkbox"/> S | <input type="checkbox"/> NA | <input type="checkbox"/> NP |
| <input type="checkbox"/> SA | <input type="checkbox"/> O | <input type="checkbox"/> NAR |
| <input type="checkbox"/> N | <input type="checkbox"/> OUA | <input checked="" type="checkbox"/> PENDING |

Legislative Director

Date

Brian Putler

6/9/04

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

FTB is charged with collecting, maintaining, and protecting the privacy of taxpayer information. As such, FTB engages in extensive electronic monitoring of employee activities. FTB has established a notification practice that includes: 1) an annual confidentiality statement, 2) a security pamphlet, 3) an electronic security banner that is presented prior to any individual gaining network or system access, and 4) annual computer-based security training. If FTB is required to specifically identify the kinds of information that will be obtained through its electronic monitoring, the systems and procedures to protect the privacy of taxpayer information and cashing of receipts could be compromised. For example, by providing the notice information required by this bill, employees could evade detection of unauthorized access to taxpayer information or theft of taxpayer checks. Additionally, an employee, or any other individual provided with such information, could use the monitoring information potentially to design and launch a successful and undetected system attack. The author may wish to consider providing an amendment that provides that it is not the intent of the bill to prevent a public agency from performing its statutorily mandated mission, such as protecting confidential taxpayer information.

The term “material change” in an electronic monitoring practice is subject to multiple interpretations, which may lead to disputes between employees and employers. Clarification of the author’s intent about this provision may help in administering this provision of the bill.

TECHNICAL CONSIDERATION

A previous version of this bill removed language that would have allowed an employee to file a civil action against an employer that violated the provisions of this bill. However, the cross-reference in paragraph (1) of subdivision (b) of this bill has not been revised to reflect that deletion.

LEGISLATIVE STAFF CONTACT

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